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No. 82-867

IN THE

Supreme Court of the United States

October Term, 1982

FAITH CENTER, INC.,

Petitioner,

vs.

FEDERAL COMMUNICATIONS COMMISSION,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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Petitioner calls the Court's attention to an FCC decision released on January 26, 1983 in which Review Board Chairman Marino issued a separate statement referring to the "still smoldering controversy" in this case and urging the Commission to permit agency and judicial determination of all constitutional claims before licensees are required to place their licenses in jeopardy. Chairman Marino reasoned as follows:

> "While joining fully in the Board's unanimous decision, this case and the still smoldering controversy in Faith Center, Inc. FCC83R-3, released January 17, 1983, indicate that there is a continuing need for the utilization of procedural means which will permit a radio licensee to obtain Commission

and court adjudication of his constitutional rights without putting his license in jeopardy. See e.g., Pacifica Foundation, 56 FCC 2d 94, para. 15 (1975).

"A decade ago then Chairman Dean Burch warned that often the evil sought to be cured by government action 'requires the delicate hands of a surgeon. The type of surgery that you [the licensees] can best prescribe -- and perform -- within your ranks. I fear as you do the hands of the government that will be called upon as a last resort -- the stubby, gnarled bureaucratic hands that belong on a third string catcher in the minor leagues, not on a public interest physician.' J.A. p. 12 Illinois Citizen

Committee for Broadcast v. FCC, 515 F.2d 397 (D.C. Cir. 1974).

"Past and the recent renewal and revocation cases confirm the wisdom of this Commission's traditional reliance on licensee self restraint, and the Commission's reluctance to take any action which may even remotely infringe upon constitutional rights without first permitting the licensee to obtain judicial review. See e.g., Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969); Yale Broadcasting v. FCC, 478 F.2d 594 (D.C. Cir. 1973); Illinois Citizen Committee, supra; Pacifica Foundation, 56 FCC 2d 94, paras. 15 and 16 (1975), affirmed 438 U.S. 726 (1978).

"In the Hildebrand case, FCC83R-6, the Board's decision deftly corrects

a well meaning but badly flawed effort to sanction an individual licensee who maintained he was exercising his freedom of expression. PRB Ex. 2, p. 12. As previously noted Faith Center's constitutional objections should be sharply focused and directed to the Commission which has jurisdiction over the issue. Faith Center, Inc., supra, FCC83R-3, para. 17."

In the Matter of David Hildebrand, FCC83R-6, PR Nos. 81-302 & 81-303 (released Jan. 26, 1983).

Respectfully submitted,
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